

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patentee: Sam Cynamon  
Patent No.: 6,475,047  
Issue Date: November 5, 2002  
Serial No: 09/785,941  
Filed: February 16, 2001  
For: RESCUE DEVICE  
Confirmation No.: 4399

**Petitions Attorney: Patricia Faison-Ball**

**PETITION FOR RECONSIDERATION UNDER 37 CFR 1.378(e)  
FOR A PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT UNDER 37 CFR 1.378(b)**

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

SIR:

This Petition for Reconsideration is filed in response to the March 1, 2013 Decision on the petition filed under 37 CFR 1.378(b) to accept the unavoidably delayed payment of the maintenance fee in connection with USP 6,475,047. This Petition for Reconsideration is filed within two (2) months from the March 1, 2013 mailing date of the Decision and is accompanied by the \$400 petition fee set forth in 37 CFR 1.17(f).

In the March 1, 2013 Decision, the Petitions Attorney states that, although a delay resulting from an error on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, the earlier petition filed on January 31, 2013 lacks the supporting documents proving the delay was "unavoidable" under the reasonably

prudent person standard and a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent.

In particular, the Petitions Attorney indicated that any request for reconsideration include:

1. Statements in connection with the circumstances surrounding the transfer to and docketing of this patent by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them;
2. A thorough explanation of how they came to be responsible for matters related to this patent, including the ultimate responsibility for payment of maintenance fees and how it is that this matter was not placed in their docketing system;
3. Information regarding the training provided to the personnel responsible for the creation and transfer of the patent records and a description of the work which was used to assure proper execution of assigned tasks; and
4. Power of Attorney by the Patentee and Fee Address Indication Form for future communication regarding maintenance fees.

**Circumstances Surrounding Transfer of the Patent and Responsibility over Maintenance Fee Payment**

The circumstances surrounding the transfer of the patent and responsibility for the maintenance fee payment are explained in the following documents:

Statement from Robert P. Michal (previously submitted with the January 31, 2013

Petition to accept the delayed payment of the maintenance fee for USP 6,475,047)

Statement by Joanne Rhee employed at Lucas & Mercanti LLP

Statement by Frederick Bills employed at Lucas & Mercanti LLP

Statement by Catherine Bacon employed at Holtz, Holtz, Goodman & Chick, P.C.

**Qualification of docketing department employees and back-up measures for transferred cases**

Information regarding the training provided to the personnel for the creation and transfer of the patent records and a description of the work which was used to assure proper execution of the assigned tasks are explained in the following statements:

Statement from Lori Cindrich employed at Lucas & Mercanti LLP

Statement from Frederick Bills employed at Lucas & Mercanti LLP

Statement from Catherine Bacon employed at Holtz, Holtz, Goodman & Chick, P.C.

#### **EXHIBITS**

- A. Sample Letter of Election sent to clients the week of April 12, 2010
- B. Reply to Letter of Election by Mr. Sam Cynamon dated April 16, 2010
- C. Docket Report prepared by Frishauf, Holtz, Goodman & Chick, P.C. on or about April 16, 2010
- D. Excel chart created by Ms. Joanne Rhee for Sam Cynamon matters
- E. Revocation of Power of Attorney with a New Power of Attorney and Change of Correspondence Address
- F. Lucas & Mercanti, LLP Docket Report entry for USP 6,475,047 showing a creation date of January 30, 2013

In response, the Petitioner believes that the foregoing explanation and all of the supporting documents establish that:

1. The clerical error in transferring file was the cause of the delay at issue;
2. At the time of transfer of responsibility there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance at both Frishauf, Holtz, Goodman & Chick, P.C. and Lucas & Mercanti LLP; and
3. The employees at both Frishauf, Holtz, Goodman & Chick, P.C. and Lucas & Mercanti LLP at the time of the transfer and docketing were sufficiently trained and experienced with regard to the function and routine for its performance such that reliance upon such employee represented the exercise of due care.

#### **POWER OF ATTORNEY AND FEE INDICATION**

A Revocation of Power of Attorney with a New Power of Attorney and Change of Correspondence Address was filed with the Patent Office on April 2, 2013 so that future

correspondence in connection with this matter will be forwarded to the office of Lucas & Mercanti, LLP.

A Fee Address Indication form was filed with the U.S. Patent Office on May 1, 2013 in connection with USP 6,475,047.

Accordingly, a favorable decision on the enclosed Request for Reconsideration under 37 CFR 1.378(e) is respectfully solicited.

#### FFEE SUBMISSION

On January 31, 2013, a maintenance fee payment in the amount of \$1,450.00 for the 7.5 year (fee code 2552) and the surcharge of \$700.00 in accordance with 37 CFR 1.20(i)(1) was paid (fee code 1557). Since the petitioner is a small-entity, the surcharge under 37 CFR 1.20(i)(1) should have been \$350.00 (fee code 2557) instead of the \$700.00 that was submitted. The petitioner respectfully states that there has been a \$350.00 overpayment. A refund of \$350.00 is respectfully requested.

In addition, a petition fee under 37 CFR 1.17(f) in the amount of \$200.00 (fee code 2462) is paid by credit card herewith. No further fees are believed to be due. However, if any fees are due, authorization is given to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 02-2275.

Respectfully submitted,



Robert P. Michalski  
Reg. No. 35,614

Dated: May 1, 2013

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**  
I hereby certify that this document is being electronically transmitted to the Commissioner for Patents via EFS-Web on May 1, 2013.

LUCAS & MERCANTI LLP

BY: Joanne Rice  
Joanne Rice